CF0000057454

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Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Cr.Appeal No; 480 OF 1990.

Appellant (IN Jail)	Roopchand Das son of Panika Das aged 19 years; R/o Kaum P.S.Kapu district-Raigarh M.P.
	-Vs-
Respondent	State of M.P.

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Filed on 8-5-90
by Sh. Y. K. Gupta
8-5-90

CR. APPEAL U/S 374(2) Cr.P.C.

Conviction	Sentence
U/s. 307 I.P.C.	R.I. for 4 years

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 480/1990

Roopchand Das

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

Post for Judgment : 23.06.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge
23.06.2006

Noted
23/6/06

Noted
23/6/06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.480/1990

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Roopchand Das

Versus

State of Madhya Pradesh (now State of Chhattisgarh)

Shri R.N.Nande, Counsel for the appellant.

Shri Arun Sao, Government Advocate for the State.

JUDGMENT

(Delivered on this 23rd day of June 2006)

This appeal is directed against the judgment dated 25.04.1990 delivered by Shri P. C. Agrawal, Sessions Judge, Raigarh in Sessions Trial No. 66/89 whereby the appellant was convicted under Section 307 I.P.C. and was sentenced to undergo rigorous imprisonment for four years.

2. The factual matrix, in brief, is that the appellant and Sunil Kumar were students. On 12.1.1988 while they were returning from the school, the appellant gave five crystals of *ilaichidana* (sugar crystals usually offered as *Prasad*). Sunil Kumar consumed the crystals which tasted bitter. He took out three crystals from the mouth and threw them. After about 5 minutes he started sweating, felt giddiness and became unconscious. One Ajar Sai Kunwar P.W.2 took him to the *Bhandaar* where Sunil Kumar consumed cow-dung mixed water and vomited. Sunil Kumar lodged report Ex.P.10 in P.S.Kapu, District Raigarh at 5.30 P.M. on the same day. Head

Constable Nanka Ram P.W.3 seized two crystals of *ilaichidana* from Sunil Kumar on 12.1.1988 vide Ex.P.1. On 14.2.1988 one plastic bottle containing sugar crystals was seized from the father of the appellant vide Ex.P.3. Sunil Kumar was examined by Dr. Pramod Kumar Singh Tomar P.W.7 on 13.1.1988 who found that he was fully conscious and responding to questions normally and his reflexes were also normal. There was no dehydration. It was opined that Sunil Kumar was under sound, physical and mental condition. The sugar crystals seized from Sunil Kumar and the sugar crystals contained in plastic bottle were sent to the Forensic Science Laborary, Sagar vide memo Ex.P.4, of Superintendent of Police, Raigarh, on 6.5.1988. Vide Ex.P.7, the F.S.L. opined that the sugar crystals contained in the plastic bottle did not contain any chemical poison while the sugar crystals weighing 10 grams which were mixed with some black coloured substance and sent separately in a red cloth contained zinc phosphate (Rat poison). After completion of investigation, the appellant was prosecuted.

3. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 7 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid.

4. Shri K.N.Nande, learned counsel for the appellant has argued that *mens rea* for the alleged offence was not established by the prosecution since the F.I.R. Ex.P.10 was silent on this point. In view of the medical evidence, the possibility that the appellant was falsely implicated could not be ruled out. Lastly, it was contended that seizure memo Ex.P.1 did not show that the two sugar crystals of whitish blue colour were sealed after seizure by the police. The memo Ex.P.4 of Superintendent of Police also did not show that the two sugar crystals were contained in a red cloth. It was also pointed out

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that the report of F.S.L. Ex.P.7 revealed that the substance examined as "article-B" weighed 10 grams and was mixed with a black substance and kept in a red cloth whereas the two sugar crystals seized vide Ex.P.1 could not have weighed more than two grams and were of whitish blue colour. In this manner, the identity of article examined by the F.S.L. did not match with the article seized from Sunil Kumar. On these grounds, it was argued that the appellant was entitled to be acquitted. On the other hand, Shri Arun Sao, learned Government Advocate argued in support of the impugned judgment.

5. Having heard the rival contentions, I have perused the record of Sessions Trial No.66/89. Sunil Kumar P.W.1 has admitted in paragraph 13 that the appellant was his childhood friend, both of them always used to stay together and no quarrel had taken place before the incident between them. Although in paragraph-9 of his testimony, Sunil Kumar stated that the appellant doubted that he had illicit relations with the wife of the appellant, and therefore, wanted to kill him but this fact was not stated by Sunil Kumar in the report lodged at Police Station Kapu on 12.1.1988. It is a material omission. The suppression of this material fact by Sunil Kumar in the report Ex.P.10 does not rule out the possibility that Sunil Kumar intended to falsely implicate the appellant. The testimony of Dr. Pramod Kumar Singh Tomar P.W.7 lends support to the above possibility since on examination of Sunil Kumar on 13.1.1988, he did not find any abnormal symptoms. His report Ex.P.10 clearly shows that Sunil Kumar was fully conscious and responding to questions properly and intelligently. His reflexes were normal and there was no dehydration. On the basis of these findings, it was opined that Sunil Kumar was under sound physical and mental condition.

6. The seizure of the two sugar crystals from Sunil Kumar clearly shows that they were whitish blue in colour. The seizure Ex.P.1 did

not show that they were sealed after seizure. It also did not show that they were kept in a red coloured cloth. The report of F.S.L. Ex.P.7, on the other hand, shows that the sugar crystals were kept in a red coloured cloth and were mixed with a black coloured substance and weighed 10 grams. It is common knowledge that the two sugar crystals could not have weighed more than two grams. The colour of the sugar crystals seized vide Ex.P.1 was shown to be whitish blue whereas the colour of the sugar crystals examined by the F.S.L. was blackish white and contained in a red cloth. It is pertinent to note that the two sugar crystals seized ("article-B") on 12.1.1988 were sent after a considerable delay of almost four months, to the F.S.L. There is no evidence on record to show that either the sugar crystals were sealed or were kept in the *Malkhana* under safe custody. Therefore, the possibility that the sugar crystals sent for chemical analysis were tampered with could not be ruled out.

7. The testimony of Ajar Sai Kunwar P.W.2 that while he had gone to the field, he had seen Sunil Kumar lying unconscious and had brought him to the village is not trustworthy because this fact was not narrated by him in his statement recorded under Section 161 Cr.P.C. Although Sunil Kumar stated that he was admitted in Patthalgaon Hospital for two days, yet no documentary proof was furnished by the prosecution in this regard. This is contradicted *in toto* by the medical evidence of Dr. Pramod Kumar Singh Tomar P.W.7 who found Sunil Kumar in sound physical and mental condition on 13.1.1988.

8. It is also pertinent to note that vide seizure memo Ex.P.3, a plastic bottle containing sugar crystals was seized from Panik Das, father of the appellant. In the report of the F.S.L., no chemical poison was found in the sugar crystals contained in this bottle. So far as the fact that Sunil Kumar had vomited at the village on the date of

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occurrence is concerned, he has admitted that at the village he drank cow-dung water and had vomited.

9. Having thus considered the evidence led by the prosecution in its entirety, the following points emerge:

A) *Mens rea* for commission of offence by the appellant is not established by the prosecution.

B) Medical evidence renders the prosecution story that poison was administered to Sunil Kumar, doubtful.

C) The testimony of Ajar Sai Kunwar P.W.2 that he saw Sunil Kumar unconscious in the field is unreliable in view of the omission in the statement under Section 161 Cr.P.C.

D) There is nothing on record to show that the two sugar crystals seized from Sunil Kumar had been sealed.

E) The description of "article-B" does not match with the colour and quantity of the sugar crystals seized vide Ex.P.1 and the possibility that the substance examined by the F.S.L. had been tampered with could not be ruled out.

F) The possibility that the appellant had been falsely implicated could not also be ruled out.

In view of the above facts, conviction of the appellant under Section 307 I.P.C. and the sentence awarded thereunder deserves to be set aside.

10. In the result, the appeal is allowed. Conviction of the appellant under Section 307 I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted.

Sd/-
Dilip Raosaheb Deshmukh
Judge

23 .06.2006